



In the Matter of:

HELEN GAIDINE OGLESBEE,

ARB CASE NO. 96-188

COMPLAINANT,

ALJ CASE NO. 96-ERA-28

v.

DATE: September 23, 1996

WESTINGHOUSE HANFORD COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Joint Request for Approval of Settlement Agreement and Motion to Dismiss to the Administrative Law Judge (ALJ) seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Decision and Order (R. D. and O.) on August 30, 1996.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 24 C.F.R. § 24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations, implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the ERA. See Settlement Agreement ¶¶ 2(b), 3. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

We have therefore limited our review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

Paragraph 10 provides that the agreement will be governed by the laws of the State of Washington. We construe this to except the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. See *Phillips v. Citizens Ass'n for Sound Energy*, Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

Paragraph 3 could be construed as a waiver by the Complainant of any causes of action she may have which arise in the future. As the Secretary has held in prior cases, see *Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord., Aug. 8, 1985, such a provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. See also *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir 1986).

Paragraph 4 provides that the Complaint shall keep the terms of the settlement confidential, with certain specified exceptions, and does not restrict Complainant's right to communicate with any appropriate governmental agency concerning the factual basis underlying any of the complaints settled. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552 (1988) (FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6. See also *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (1993).

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. See Settlement Agreement ¶ 7.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member